IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP NO.5402 OF 2007
DATE OF DECISION: 16-04-2007

Ex.Naik Naresh Singh Manhas s/o Late Sh. Chain Singh of 11 Dogra attached with 5 JAK LI r/o Village Phullra, Tehsil Pathankot, District Gurdaspur.

.....PETITIONER

VERSUS

1. Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Chief of Army Staff, Army H.Q., New Delhi.
3. Commanding Officer, 11 Dogra C/o 56 APO.
4. Commanding Officer, 5 Battalion, J&K Light Infantry C/o 56 APO.

.....RESPONDENTS

CORAM:- **HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA**
HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.Chanan Singh, Advocate
for the petitioner.

R S MADAN, J.

On the night intervening June 27-28, 2003, the petitioner was posted as Naik on Quarter Guard duty in 11 Dogra, Sanjuwan Cantt. (J&K) where a tragic incident took place at about 4.30 A.M. Two terrorists armed with automatic weapons after giving a slip to the Station Security set up including Area Guard of the unit, managed to reach the quarter guard and fired upon and killed Front Santry, Sepoy Surinder Singh and also fired at and shot dead Sepoy Devi Singh and Sepoy Ajay Singh and injured Sepoy

Sarup Singh, who being then off duty were sleeping inside the quarter guard room, before escaping towards the living area of the lines. The said tragic incident was got investigated by the Commanding Officer 11 Dogra and the petitioner was attached with the 5 J&K Light Infantry .

Col. SK Verma, the Commanding Officer, 5 J&K L.I. vide order dated 10-01-2004, original of Annexure P-2 passed under Army Rule 23, directed the recording of summary evidence by Major Satbir Singh Gill to frame charges under Sections 34-C & 63 of the Army Act.

He was, however, charge-sheeted as under vide Annexure P5:

CHARGE SHEET

"The accused Number 3991857X Rank Naik Name Naresh Singh Manhas of 11 Dogra att with 5 JAK LI is charged with.

AA SEC 63

"AN ACT PREJUDICIAL TO GOOD ORDER AND MILITARY DISCIPLINE"

In that he,

at Sanjuwan Cantt (Jammu) on 28 June 2003 at about 0430h, while officiating as Guard Commander at 11 Dogra Quarter Guard in absence of No.3985750M Havildar Prabh Dayal, during attack by the terrorists improperly omitted to exercise effective Command and Control on Quarter Guard sentries to neutralize the terrorists.

Station: Sanjuwan Cantt (Jammu)
Dated: 02 June 2004

Sd/-
(SK Verma)
Colonel
Commanding Officer
5th Battalion the Jammu and Kashmir Light Infantry"

Vide Annexure P6, he was found guilty and sentenced by the Court as under:-

SENTENCE BY THE COURT

"Taking all these matter into consideration, I know sentence accused No.3991857X Naik Naresh Singh Manhas of 11 Dogra attached with 5 JAK L.I.

(a) To be reduced to ranks.

(b) To suffer rigorous imprisonment for six months. I direct that the sentence of rigorous imprisonment shall be carried out by confinement to civil prison.

(c)The accused is recommended division C (or III), while undergoing sentence in civil jail. If there are only two division of prisoner, the accused is recommended division B (or II).

(d) To be dismissed from service.

Sd/-
Signed at Sanjuwan Cantt. Jammu
Days of June 2004

Sd/-
(SK Verma)
Col.
The Court"

Thereafter, the petitioner filed an appeal on 25-8-2004 before the Chief of the Army Staff-respondent No.2 under Section 164 of the Army Act, against order dated 13-6-2004. When no decision was taken on the appeal of the petitioner for more than 18 months, the petitioner approached this Hon'ble Court by filing the CWP No.8881 of 2006, which was disposed of on 30-5-2006 by Division Bench of this Court and directions to the respondents were issued to take cognizance of the appeal and to decide the same preferably within four months. Thereafter, the appeal of the petitioner was dismissed by the Chief of Army Staff.

The petitioner has now challenged through the present writ petition the impugned order dated 13-6-2004 (Annexure P6) passed by the Summary Court Martial (SCM) and order dated 22-5-2006 (Annexure P11) passed by the Chief of the Army Staff.

We have gone through the impugned orders Annexure P6 dated 13-06-2004 and Annexure P-11 dated 22-05-2006 passed by the Chief of the Army Staff.

The allegations against the petitioner have been proved before the summary court martial and he was found to have failed to perform his duty of quarter guard sentries to neutralize the terrorists attack on the night intervening June 27-28, 2003 in 11 Dogra, Sanjuwan Cantt (J&K).

The petitioner was tried by the Summary Court Martial (SCM) in accordance with the provisions of Army Act and Rules made thereunder. He was afforded full opportunity to defend himself at the trial. He was found guilty on the basis of evidence lead before the Summary Court Martial. No malafide has been pointed out while passing the inpugned order under challenge.

We do not find any infirmity and illegality in the impugned order dated 13-6-2004 (Annexure P6) and order dated 22-5-2006 (Annexure P11).

No merit. Dismissed.

(R S MADAN)
JUDGE

(ASHUTOSH MOHUNTA)
JUDGE

April 16, 2007

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